

SEP 15 1942

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IN THE
Supreme Court of the United States

OCTOBER TERM 1942

No. **401**

In The Matter of The Application of

PARTS MANUFACTURING CORP.,

Petitioner,

against

**THOMAS P. LYNCH, Special Agent, Federal Bureau of In-
vestigation; UNITED STATES OF AMERICA; UNITED STATES
ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK,**
Respondents.

**PETITION FOR WRIT OF CERTIORARI
AND BRIEF IN SUPPORT
THEREOF**

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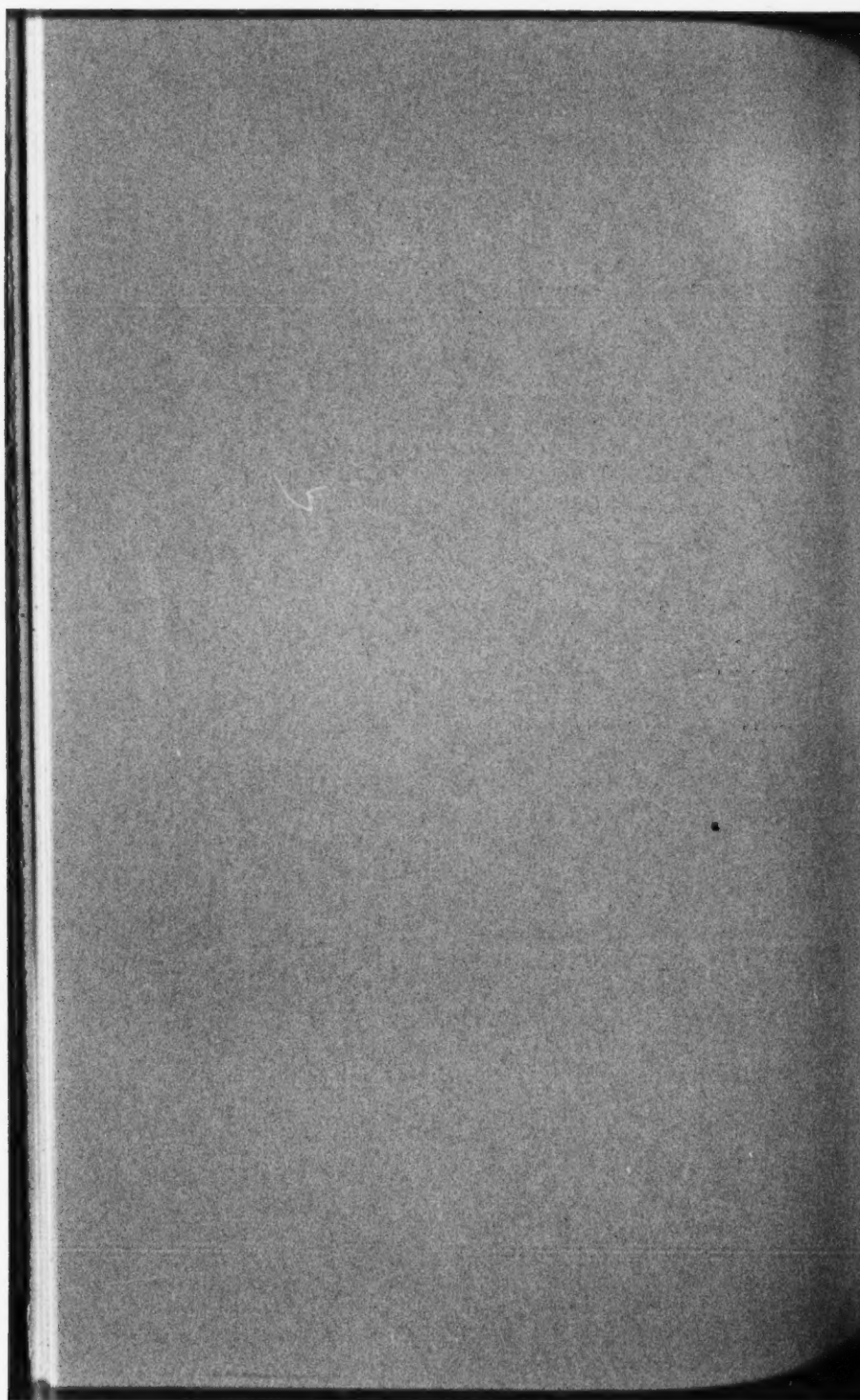


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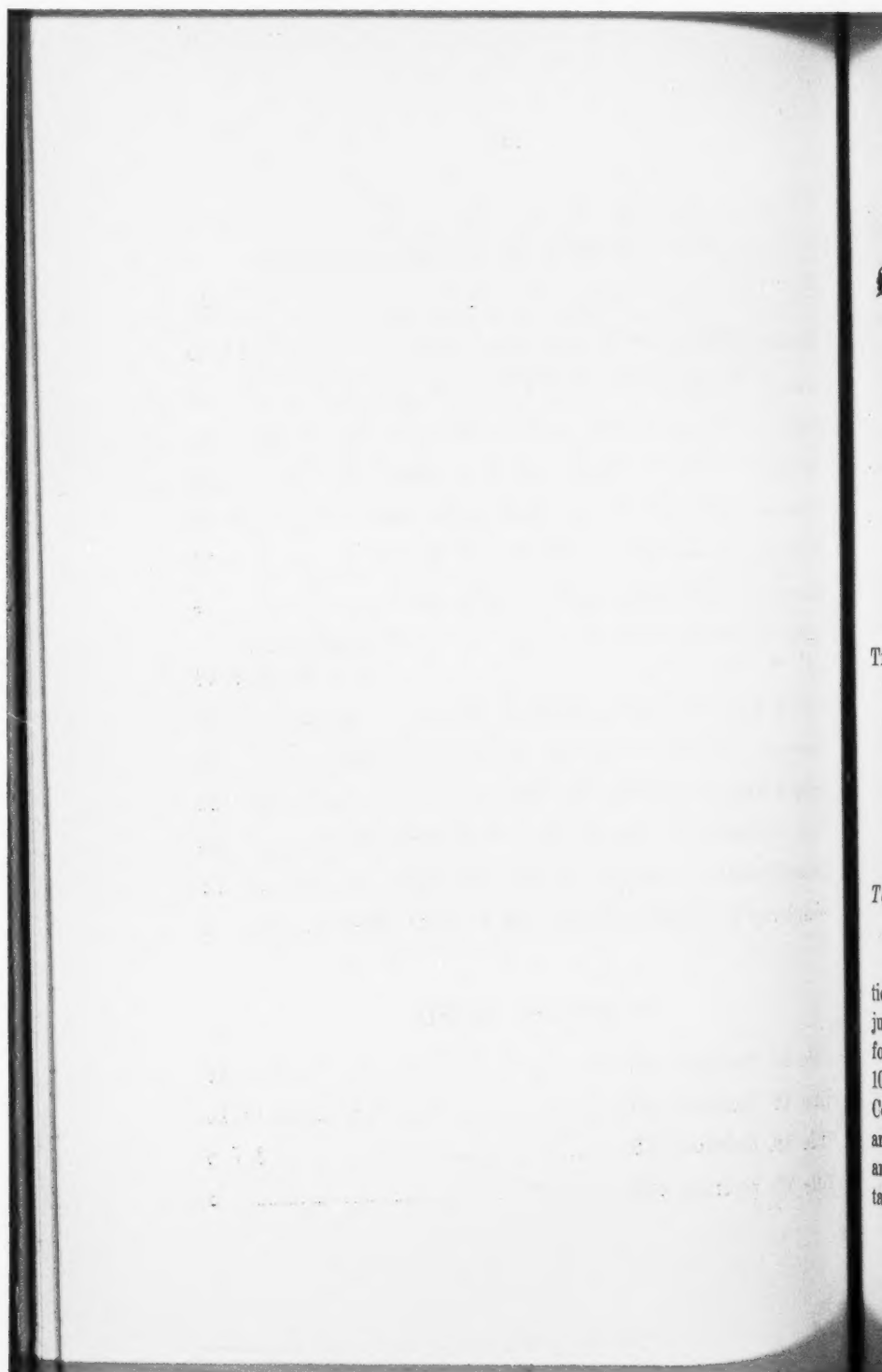
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PETITION FOR WRIT OF CERTIORARI

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The undersigned, on behalf of the above-named petitioner, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above case on August 10, 1942, affirming the order of the United States District Court for the Southern District of New York, which denied an application of this petitioner to quash a search warrant and to suppress the seizure and compel the return of certain goods.

Statement

The background of the search warrant in question is as follows: An investigation was begun in the Eastern District of Michigan into the alleged violation of the National Stolen Property Act, Title 18, Section 415, U. S. C. A. The District Court in Michigan by an order dated December 8, 1941, designated the Director of the Federal Bureau of Investigation and his duly authorized representatives as officers of the Court and directed them to go to certain premises and there to seize automobile parts alleged to have been stolen from the Ford Motor Company in Michigan. Included in the order were premises occupied by this petitioner (R. 26-28). Pursuant to this order, which did not contain any description of the property to be seized, the F. B. I. agents on December 11, 1941, seized whatever automobile parts they believed should be seized. These parts were all owned by this petitioner. The petitioner has never been indicted.

The order and seizure pursuant to it were subsequently declared illegal by the Circuit Court of Appeals for the Second Circuit (*Weinberg v. U. S.*, 2 Cir., 126 F. [2d] 1004), as a violation of the search warrant statute, Title 18, Sections 611-625, U. S. C. A., and the Fourth Amendment.

Pursuant to the foregoing decision, the United States District Court for the Southern District of New York, on March 20, 1942, ordered the return by April 2, 1942, of the property illegally seized from this petitioner (R. 29-30). Before the return was made and after the order for its return had been issued, the F. B. I. agents gave to one Emanuel Goodman, attorney for Ford Motor Company, on March 31, 1942, a detailed list of the property illegally seized, which list was used by the Ford attorney as the basis for a replevin action by Ford Motor Company against this petitioner (R. 31-40).

On April 2, 1942, representatives of the Federal Bureau of Investigation appeared at the premises of the petitioner with a truck and began to unload the merchandise previously illegally seized in ostensible compliance with the

order for the return. Simultaneously a New York Deputy Sheriff appeared and served a writ of replevin for the very auto parts which the Federal Bureau of Investigation was then returning. This writ had been issued in an action brought by the Ford Motor Company against the petitioner in the Supreme Court, New York County, and which was based on the schedule supplied by the Federal Bureau of Investigation to the Ford attorney (R. 31-40). Under this writ the parts which were in the process of being returned were immediately seized by the Sheriff and transported to a warehouse. While the parts were in this warehouse, an Assistant United States Attorney, Edward J. Behrens, and one Sol Rimar visited the warehouse and examined the parts (R. 43-46, 48-51). Affidavits were made by these men and others and presented to the District Court, ex parte, for issuance of the search warrant (R. 43-56).

On April 13, 1942, the search warrant issued (R. 41-42). In the meanwhile petitioner had given bond in accordance with the Civil Practice Act of New York to reclaim the property seized in the replevin action.

On April 14, 1942, just as petitioner was about to retake the goods and remove them from the warehouse (where they had been placed by the Sheriff in the replevin action) the search warrant of April 13, 1942, was served and the goods were seized for a second time.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered August 10, 1942 (R. 92). The jurisdiction of THIS COURT is invoked under Section 240(b) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, U. S. C. A., Title 28, Section 347[b]).

The Questions Presented

1. Whether the search warrant of April 13, 1942, issued with probable cause within the meaning of the Fourth Amendment and Title 18, Sections 613, 615, U. S. C. A.

2. Whether the search warrant of April 13, 1942, and the affidavits upon which it was based, particularly described the goods to be seized, as required by the Fourth Amendment and Title 18, Section 613, U. S. C. A.

3. Whether the facts in the affidavits of Behrens and Rimar which referred to the examination at the warehouse, and which formed the basis for the search warrant of April 13, 1942, did not violate the prohibition against the use of illegally seized evidence established by THIS COURT in *Silverthorne v. U. S.*, 251 U. S. 385, 40 S. Ct. 182, 64 L. Ed. 319.

Specification of Errors

The errors presented for review along with the questions above are set forth on pages 7-8 herein, and we request that said specification of errors be deemed incorporated in this petition.

Reasons for Granting the Writ

(1) The pragmatic effect of the decree of the Circuit Court of Appeals is to emasculate the Fourth Amendment to the Constitution and the previous decisions of this Court and to reduce the interdiction against the use of evidence illegally seized to a meaningless metaphysical abstraction.

(2) The effect of the decree of the Circuit Court of Appeals is to interpret the absolute requirement found in the Fourth Amendment and Title 18, Section 613, U. S. C. A., to set forth a particular description of the property to be seized, to mean that a particular description was not necessary and that a most general and vague one would suffice. That affidavits which must contain particular descriptions of property to be seized (Title 18, Sec. 613, U. S. C. A.) are sufficient if not particular.

(3) The decision of the Circuit Court is contrary to the decisions of THIS COURT in the following cases:

Silverthorne Lumber Co. v. United States, 251 U. S. 385, 40 S. Ct. 182, 64 L. Ed. 319;

Nardone v. United States, 308 U. S. 338;

Sgro v. United States, 287 U. S. 206, 210;

Grau v. United States, 287 U. S. 124.

(4) The decision of the Circuit Court is in conflict with the distinction made by the Circuit Court of Appeals, Fourth Circuit, *Elrod v. Moss*, 278 F. 124, 129, between the particularity of description required under the Fourth Amendment to the Constitution in search warrants for contraband and search warrants issued in cases of stolen property.

WHEREFORE, the petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Judicial Circuit, City of New York, New York, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named a transcript of the record and all proceedings herein; and that the decree of the Circuit Court of Appeals for the Second Circuit be reversed by this Honorable Court, and that the petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Dated, New York, N. Y., September 10, 1942.

Respectfully submitted,

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